

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VINAY YADAV,

Plaintiff,

VS.

FROST BANK,

Defendant.

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CIVIL ACTION NO. SA-20-CA-005-FB

ORDER ACCEPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Before the Court are the Report and Recommendation of United States Magistrate Judge filed on December 16, 2020 (docket #58), and Plaintiff's Objections to Magistrate's Report and Recommendation filed December 30, 2020 (docket #59).

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of them. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether they are either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

On the other hand, any Report or Recommendation to which there are objections requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Commission*, 834 F.2d 419, 421 (5th Cir. 1987).

In the Report, United States Magistrate Judge Chestney recommends that Defendant's Motion to Dismiss Plaintiff's First Amendment to Original Petition (docket #40) be granted in part; Plaintiff's Motion for Leave to File Second Amendment to Petition (docket #49), and Defendant's Motion for Sanctions (docket #42) be denied; and this case be remanded to state court pursuant to 28 U.S.C. § 1367(c)(3).


The Court has reviewed the voluminous objections filed by the plaintiff and has conducted a de novo review. The Court finds the objections lack merit, and therefore, the Court hereby accepts, approves, and adopts the Magistrate Judge's factual findings and legal conclusions contained in the Report and Recommendation (docket #58), and finds the Recommendation should be accepted pursuant to 28 U.S.C. § 636(b)(1) such that Defendant's Motion to Dismiss Plaintiff's First Amendment to Original Petition (docket #40) shall be granted in part such that all of plaintiff's claims except for his state law assault claim shall be dismissed; Plaintiff's Motion for Leave to File Second Amendment to Petition (docket #49), and Defendant's Motion for Sanctions (docket #42) shall be denied; and this case with only its state law claim of assault remaining shall be remanded *sua sponte* to state court pursuant to 28 U.S.C. § 1367(c)(3).

Accordingly, it is hereby ORDERED that the Report and Recommendation of United States Magistrate Judge (docket #58) is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Defendant's Motion to Dismiss Plaintiff's First Amendment to Original Petition (docket #40) is GRANTED IN PART such that all of plaintiff's claims except for his state law assault claim as set forth in the Report and Recommendation are DISMISSED; Plaintiff's Motion for Leave to File Second Amendment to Petition (docket #49) and Defendant's Motion for Sanctions (docket #42) are DENIED; and this case with only its state law claim of assault remaining is REMANDED, *sua sponte*, to the 288th Judicial

District Court of Bexar County, Texas, pursuant to 28 U.S.C. § 1367(c)(3). IT IS FURTHER ORDERED that the Clerk of the Court send a certified copy of this Order to the clerk of the state court.

It is so ORDERED.

SIGNED this 31st day of December, 2020.



FRED BIERY
UNITED STATES DISTRICT JUDGE